IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.1

Excise Appeal No.945 of 2011

(Arising out of Order-in-Original No.39-40/Commissioner/2011 dated 25.08.2011 passed by Commissioner, Central Excise & Service Tax, Jamshedpur.)

M/s. Hindustan Coca Cola Beverages Private Limited
(Adityapur, Kandra Road, Jamshedpur.)

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur-831001, Jharkhand.)

APPEARANCE

NONE for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75521/2024

DATE OF HEARING : 11.03.2024
DATE OF DECISION : 11.03.2024

Per : ASHOK JINDAL :

The Appellant is engaged in the manufacture of non-alcoholic aerated beverages and availing Cenvat credit on various inputs and capital goods. The appellant availed Cenvat credit on PVC crates which were used in the manufacture of non-alcoholic aerated water. Therefore, Cenvat credit was sought to be denied to the appellant for the period November 2001 to March 2006 on PVC crates. The matter was adjudicated, demand was confirmed by denying the Cenvat credit on PVC crates. Against the said order, the appellant is before us.

2. None appeared on behalf of the appellant, nor any request for adjournment has been received. On perusal of records, we find that the appeal itself can be disposed of at this stage, therefore, the appeal is taken up for disposal.

3. We find that similar issue came up before this Tribunal in the case of Lumbini Beverages Pvt.Ltd. vs. Commissioner of C.Ex., Patna [2012 (284) E.L.T. 695 (Tri.-Kolkata)], wherein this Tribunal has observed as under:-

> ***"5.*** *We have considered the submissions and perused the record. The issue revolves in a very narrow compass. It is the Revenue's case that the appellants are collecting deposits from the customers on the PVC crates used for transporting aerated water in bottles, and hence the CENVAT Credit is not admissible. We do not find any merit in the said allegation. It is not in dispute that the PVC crates are used by the appellants in their factory in the automatic process of placing bottles in the crates during the process of manufacture of aerated water as explained by the representative of the appellants. It is also not in dispute that the amortized cost of the PVC crates are included in its value. We agree with the ld. Representative that since the goods are assessed to duty under Section 4A of Central Excise Act attracting MRP based assessment inclusion of cost of packing or otherwise in the value of finished goods is irrelevant in determining the issue of admissibility of CENVAT Credit of the duty paid on such PVC crates. We find that this Tribunal in the case of CCE, Calcutta-I v. Black Diamond Beverages - 1997 (91) E.L.T. 422 (Tri.) has held that Modvat Credit under erstwhile Rule 57A of Central Excise Rules is admissible on plastic crates and it is later followed in Black Diamond Beverages Ltd. v. CCE, Cal-I - 1998 (103) E.L.T. 340 (Tri.). Similar view was also expressed in the case of Delhi Bottling Co. v. CCE, Chandigarh - 1999 (105) E.L.T. 42 and also in the case of Parle Bevarages Ltd. v. CCE, Mumbai - 2000 (124) E.L.T. 803 (Tri.). We find that*

even though the judgments were delivered under Rule 57A of the erstwhile Central Excise Rules, 1994 of the Central Excise Rules, where the condition, was that the value of the packing materials ought to be included in the assessable value of the finished goods and such condition is no more relevant in the definition of 'Input' under the CENVAT Credit Rules, 2004, but the CENVAT Credit would be held as admissible as the Larger Bench of the Tribunal in the case of Banco Products (I) Ltd. v. CCE, Vadodara-I - 2009 (235) E.L.T. 636 has held that credit is available on plastic crates used as material handling equipments in the factory premises either treating it as capital goods or also as an 'input'. We do not find merit in the observation of the ld. Commissioner that CENVAT Credit is not admissible on the PVC crates as the appellants had collected interest free security deposits on such crates from their customers. We are of the opinion that CENVAT Credit is admissible once it satisfies the definition of 'input' and such input is used in or in relation to the manufacture of the final product. In the instant case the appellants had explained the use of such crates during the process of manufacture and categorical in his submission that disastrous consequence of non-use of such crates would occur while filling the bottles in the respective crates which ultimately facilitates the transportation of the bottles within the factory and from factory to the customers' premises. In these circumstances the PVC crates being used as inputs/capital goods in the manufacture of aerated waters accordingly CENVAT Credit is admissible on the same. Ld. Representative has also invited our attention to a recent Order of Commissioner of Central Excise, Patna No. 46/51/MP/Denovo/Commissioner/2011 dated 24-10-2011 wherein CENVAT Credit on PVC crates has been allowed. In view of above findings we do not find any substance in the impugned order passed by the ld. Commissioner and *accordingly the same is set aside and the appeal is hereby allowed."*

4. We find that in this case PVC crate used by the appellant in manufacturing their final product i.e. non-alcoholic aerated beverages and these PVC crates are used for proper handling of other inputs or finished goods.

5. In that circumstances, we hold that this PVC crates qualify as inputs in terms of Rule 2(k) of Cenvat Credit Rules, 2004, therefore, we hold that the appellants are entitled to take Cenvat Credit on PVC crates and has correctly taken the Cenvat credit. Therefore, we do not find any merit in the impugned order. The same is set aside.

6. In the result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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